

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JOE HOLCOMBE, et. al,	§	NO. 5:18-CV-00555-XR
	§	
Plaintiffs	§	Consolidated with:
	§	5:18-cv-00712-XR (<i>Vidal</i>)
	§	5:18-cv-00881-XR (<i>Uhl</i>)
vs.	§	5:18-cv-00944-XR (<i>Ramsey</i>)
	§	5:18-cv-00949-XR (<i>McNulty</i>)
UNITED STATES OF	§	5:18-cv-00951-XR (<i>Wall</i>)
AMERICA,	§	5:18-cv-01151-XR (<i>Amador</i>)
	§	5:19-cv-00184-XR (<i>Brown</i>)
Defendant	§	5:19-cv-00289-XR (<i>Ward</i>)
	§	5:19-cv-00506-XR (<i>Workman</i>)
	§	5:19-cv-00678-XR (<i>Colbath</i>)
	§	5:19-cv-00691-XR (<i>Braden</i>)
	§	5:19-cv-00706-XR (<i>Lookingbill</i>)
	§	5:19-cv-00714-XR (<i>Solis</i>)
	§	5:19-cv-00715-XR (<i>McKenzie</i>)
	§	5:19-cv-00805-XR (<i>Curnow</i>)
	§	5:19-cv-00705-XR (<i>Workman</i>)
	§	5:19-cv-00806-XR (<i>Macias</i>)

**DEFENDANT UNITED STATES' MOTION FOR LEAVE TO
DESIGNATE RESPONSIBLE THIRD PARTIES**

COMES NOW THE UNITED STATES OF AMERICA files this Motion for Leave to Designate Responsible Third Parties and in support thereof, would state as follows:

1. The United States files this motion for leave to designate Devin Patrick Kelley (“Kelley”), Academy, Ltd., d/b/a Academy Sports & Outdoors (“Academy”), and John Does Nos. 1–10, a person or persons unknown who may have conspired with Kelley to commit the criminal act that was the cause of the injuries that are the subject of the lawsuit, as responsible third parties pursuant to Tex. Civ. Prac. & Rem. Code § 33.001, et. seq.

2. In its Answers to the Plaintiffs' Complaints (ECF Nos. 106, 106A, 108, 109, 110, 111, 112, 113, 114, 115), the United States previously pleaded that Kelley, Academy, and any unknown persons who may have conspired with Devin Patrick Kelley to commit the criminal act that was the cause of the injuries that are the subject of the lawsuit, i.e. John Does, are responsible third parties within the meaning of § 33.011(6) and that Kelley, Academy, and any unknown persons who may have conspired with Devin Patrick Kelley to commit the criminal act that was the cause of the injuries that are the subject of the lawsuit, i.e. John Does, are responsible in accordance § 33.003(a).

3. As stated in the Plaintiffs' Complaints and Amended Complaints, Kelley was the individual who planned and committed the shooting at the First Baptist Church of Sutherland Springs, in Sutherland Springs, Texas, on November 5, 2017. Kelley's conduct caused the harm for which recovery is sought in this action.

4. Academy sold Kelley a firearm, specifically a high-capacity Model 8500 Ruger AR-556 semi-automatic AR-15 style rifle, which included a large-capacity 30-round magazine. To purchase this firearm, Kelley presented Academy with a Colorado driver's license. With respect to the sale of that rifle, the Federal Gun Control Act required Academy to comply with the laws of both Texas, the seller's state, and Colorado, the buyer's apparent state of residence. 18 U.S.C. § 922(b)(3). Colorado law restricts the sale of high-capacity magazines, i.e. magazines holding more than fifteen rounds. Colo. Rev. Stat. §§ 18-12-301, 302. Therefore, Academy was not permitted to sell Kelley the Model 8500 Ruger AR-556 under federal law because sale of that rifle would have been illegal in Colorado. On November 5, 2017, Kelley used the Model 8500 Ruger AR-556 to commit the shooting at the First Baptist Church of Sutherland Springs.

Academy's conduct thus contributed to causing the harm for which recovery is sought in this action.

5. John Does Nos. 1–10 are any person or persons unknown who may have conspired with Devin Patrick Kelley to commit the criminal act that was the cause of the injuries that are the subject of the lawsuit. John Does' conduct contributed to causing the harm for which recovery is sought in this action.

6. Therefore, the United State requests leave to designate Devin Patrick Kelly, Academy, Ltd., d/b/a Academy Sports & Outdoors, and John Does Nos. 1–10 as responsible third parties pursuant to Tex. Civ. Prac. & Rem. Code § 33.004.

Dated: October 15, 2019

Respectfully submitted,

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UNITED STATES OF AMERICA

CERTIFICATE OF SERVICE

I certify that on October 15, 2019, I electronically filed the foregoing with the clerk of court by using the CM/ECF system, and that all counsel of record have received notice and been served through that system.

/s/ Paul David Stern
PAUL DAVID STERN